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Supreme Court, Appellate Division, Third Department, New York

In the Matter of KEVIN DZIELSKI, Appellant
v.

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION,
Respondents

WORKERS' COMPENSATION BOARD, Respondent

Decided June 17, 2021

Facts: This is an Appeal from a decision of the Workers' Compensation Board which, among other issues, determined the amount of counsel fees due to claimant's counsel.

The claimant is a corrections officer with an established work-related case for injuries to the right shoulder and left wrist as well as consequential right carpal tunnel syndrome. The claimant pursued permanency and was evaluated accordingly. Both the claimant's doctor and the independent medical examiner offered differing opinions on schedule loss of use. The depositions were completed and in a Memorandum of Law submitted on behalf of the claimant, the law firm representing the claimant requested \$52,000.00 in counsel fees. In a Reserved Decision, the Judge credited the medical opinion of the independent medical examiner and found a 50% schedule loss of use of the right arm, 20% schedule loss of use of the right hand and a 20% schedule loss of use of the left hand and further found the law firm failed to submit an OC-400.1 fee application form which should have been submitted at the time the Memorandum was filed and as such, the Judge awarded a \$1,000.00 attorney's fee. An Appeal was filed by the claimant's law firm wherein they again requested \$52,000.00 as a fee or, in the alternative, a \$30,000.00 fee based on an OC-400.1 that was enclosed with the Application for Board Review by the Workers' Compensation Board. The Board affirmed the Judge's finding inclusive of the finding of a \$1,000.00 fee. The claimant's attorneys appealed.

Holding: *Modified and remitted to Workers' Compensation Board for further proceedings not inconsistent with this Court's decision.*

Discussion: The Court noted in its decision that the only issue on appeal pertained to the amount of the counsel fee awarded. It noted that the Notice of Appeal, which was filed in the claimant's name, should have been filed on behalf of the law firm. It also noted the record indicated law firm enclosed an OC-400.1 fee application with its Application for Board Review and as the Board Decision indicated the law firm failed to file such form, it appeared the Board was unaware of the enclosed documentation. The matter was remitted to the Board for further determination.

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